IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1372 of 1992

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTILAL M DOSHI - Applicant(s)

Versus

CHIMANLAL S GOSALIAY - Opponent(s)

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Appearance :
MR SHAURYA GOHIL for Mr. HARIN P RAVAL for Petitioner
MR SURESH M SHAH for MEHUL SHAH for Respondent
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 26/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 31st March, 1992 passed by the learned Assistant Judge, Surendranagar in Civil Appeal No. 17 of 1988, the

respondent, defendant in Civil Suit No. 33 of 1982, has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

The respondent-plaintiff is the owner of Block no. 33, situated in Alka Society in Surendranagar [hereinafter referred to as, "**the suit House**"]. The suit house was leased to the defendant for monthly rent of Rs. 300/=. As the defendant was irregular in making payment of the rent and was in arrears of rent since 1st September, 1980, the respondent instituted above referred Civil Suit No. 33 of 1982 in the Court of learned Civil Judge [JD], Surendranagar for recovery of possession of the suit house and the amount of rent due. According to the plaintiff, the suit house was leased to the defendant on and from 1st April, 1977 for a monthly rent of Rs. 300/=. The defendant was irregular in payment of rent. In the month of October, 1979, the defendant paid a sum of Rs. 3,100/= by five postdated cheques in the sum of Rs. 500/= each, and a postdated cheque in the sum of Rs. 600/=. Of the said six cheques, two cheques were honoured by the banker and the plaintiff had realized a sum of Rs. 1,000/=. Two of the said cheques were dishonoured by the Bank for want of adequate balance. The remaining two cheques were not presented to the Bank. The plaintiff, by notice dated 15th

November, 1980 [**Exh. 62**] informed the defendant that he was in arrears of rent and that a sum of Rs. 3,500/= was due and payable by 31st October, 1980. The defendant was also given notice of termination of tenancy. In answer to the said notice, the defendant paid a sum of Rs. 2,000/= by a demand draft dated 24th November, 1980. The plaintiff vide Notice Exh. 65 dated 26th November, 1980 informed the defendant that the said sum of Rs. 2,000/= was accepted by the plaintiff as part payment of the rent and that the defendant was still in arrears of rent by Rs. 2,100/=. Once again, the defendant was called upon to hand over the vacant possession of the suit house. Since then the defendant appears to have made one more payment of Rs. 1000/= by demand draft dated 8th April, 1981. As the defendant was still in arrears of rent and did not pay the monthly rent, the plaintiff gave suit notice Exh. 68 dated 12th October, 1981 and demanded a sum of Rs. 3,800/=; the amount of rent due till September, 1981 and called upon the defendant to hand over vacant possession of the suit house. The defendant did not respond to the said notice. Therefore, the Suit.

The suit was contested by the defendant vide written statement Exh 9. The defendant denied the allegations made in the plaint. The defendant denied that the agreed rent of the suit house was Rs. 300/= per month. According to

the defendant, the agreed rent of the suit house was Rs. 200/= per month inclusive of all taxes and the standard rent of the suit house was Rs. 100/= per month.

The learned Civil Judge, by judgment and order dated 30th January, 1988 held that the contractual rent of the suit house was Rs. 200/= inclusive of all taxes. The learned Civil Judge also held that the standard rent of the suit house was Rs. 200/= per month. Considering the amountof rent paid by the defendant from time to time, the learnd Civil Judge held that the rent paid by the defendant was for a period upto 30th November, 1981. On the date of the suit i.e. February, 1982, the defendant was not in arrears of rent for six months, as alleged by the plaintiff. The defendant was, therefore, not a tenant in arears of rent. The learned Civil Judge accordingly dismissed the suit and passed decree in favour of the defendant. Feeling aggrieved, the plaintiff preferred Civil Appeal No. 17 of 1988 in the Court of the learned District Judge, Surendranagar. The learned Assistant Judge, by *impugned* judgment and order dated 31st March, 1992, reversed the finding recored by the trial court and held that the defendant was a tenant in default and passed a decree for eviction against the defendant. The lower appellate Court held that the contractual rent of the suit house was Rs. 300/= per month, exclusive of taxes. The

defendant used to pay monthly rent of Rs. 400/= including the taxes. Thus, the taxes paid by the defendant were payable by month. The lower appellate court also held that the defendant did not raise dispute as to the standard rent within one month from the date of the receipt of the suit notice by preferring application under Section 11 (1) of the Rent Act. The dispute as to the standard rent raised in the written statement was therefore, not genuine or *bona fide*. According to the lower appellate court, the matter was covered by Section12 (3)(a) of the Rent Act. The defendant having failed to pay the amount of rent due within one month from the date of the receipt of the suit notice. Nor did he raise dispute as to the standard rent within such one month. The decree for eviction was, therefore, inevitable. Feeling aggrieved, the defendant has preferred the present Revision Application.

Learned advocate Mr. Gohil has assailed the judgment of the lower appellate Court. He has read-over the judgments of both the Courts below and has submitted that the reasoning adopted by the lower appellate Court is not sustainable. He has submitted that in absence of any documentary evidence or any other direct evidence, the inference drawn by the lower appellate court against the defendant is not sustainable. Mr.Gohil has produced a

statement of accounts. According to Mr.Gohil pending this Revision Application the defendant has paid the amount of arrears of rent as directed by this Court and has since paid the rent regularly. In the submission of Mr. Gohil, the defendant is entitled to protection against eviction. Mr. Gohil has also challenged the jurisdiction of the lower appellate court in interferring with the decision of the trial Court in so far as the standard rent of the suit house has been held to be Rs. 300/= per month. He has submitted that sub-section (5) of Section 11 of the Rent Act provides that no appeal shall lie against any order of the Court made under sub-sections (3) or (4) of Section 11 of the Rent Act. He has submitted that the learned Civil Judge had, in exercise of power under Section 11 of the Rent Act, determined the standard rent of the suit house to be Rs. 200/=. The lower appellate Court, therefore, could not have exercised its appellate jurisdiction in so far as the standard rent was concerned. The contention is required to be rejected outright.

Mr.Shah has contested the Revision Application. He has submitted that as admitted by the defendant the rent charged from the defendant was inclusive of taxes and that the defendant was not liable to pay the taxes to the local authority. The matter was, therefore, governed by Section 12(3)(a) of the Rent Act. As the defendant failed to pay the amount of rent within one month from the date of the

receipt of the notice of demand, the decree for eviction was inevitable. He has further submitted that even if the defendant were entitled to protection under Section 12(3)(b) of the Rent Act, the defendant was under an obligation to pay or deposit the rent regularly pending the suit and the Appeal before the lower appellate Court. He also has produced a statement of accounts containing the deposits made by the defendant pending the suit and the Appeal before the lower appellate Court. He has submitted that after the trial Court decided the standard rent of the suit house to be Rs.200=00 the defendant was required to deposit the amount of standard rent regularly pending the Appeal. He has submitted that during the pendency of the Appeal i.e. from the month of March, 1988 to March, 1992 the defendant had made only two deposits for a total sum of Rs.8,800=00 i.e. the rent for 44 months [*calculated @ Rs.200=00 a month*]. Thus, pending the Appeal not only the defendant did not deposit the rent regularly every month as required of him but even at the time of the decision in the Appeal he was in arrears. He made further deposits only after a conditional stay was granted by this Court i.e. under compulsion. Pending this Revision Application though the defendant was granted stay on usual terms i.e. on condition that he continued to pay the rent regularly, *evidently*, the defendant has not paid the rent regularly every month. He has submitted that the lump-sum deposits

are made once in two years or once in three years, etc. The defendant has *thus* failed to comply with the directions issued by this Court also. He, therefore, does not deserve protection under Section 12(3)(b) of the Rent Act either.

The first question that is required to be considered is, whether the agreed rent of the suit house was Rs.300=00 as alleged by the plaintiff or Rs.200=00 as contended by the defendant. In support of his *plea* the plaintiff has examined himself and has produced letter Exh. 52. The letter Exh. 52 is a contemporaneous evidence. It is an admitted fact that the suit house was leased to the defendant through one Popatlal Sheth. The letter Exh. 52 is written by the said Popatlal Sheth wherein he had mentioned that the suit house was given to the defendant for a monthly rent of Rs.300=00. *Whereas*, the defendant has relied upon three rent receipts Exhs.94, 95 and 96 in the sum of Rs.400=00 each. Though the said rent receipts are purportedly signed by the plaintiff it is admitted by the defendant that those receipts were issued by the aforesaid Popatlal Sheth. The said receipts have been issued in the sum of Rs.400=00 for a period of two months each from 1st April, 1977 to 30th September, 1977. The learned trial Judge had, relying upon the said receipts and other evidence, held that the agreed rent of the suit

house was Rs.200=00 per month. *Whereas*, the lower appellate Court has held that the said receipts were issued for rent of one month each i.e. rent plus taxes. I am unable to agree with either of the Courts below. The endorsement made on the said receipts do indicate that that was the rent paid for a period of two months mentioned in the receipts. It, therefore, cannot be read as rent plus taxes for a period of one month. Though the said receipts were admittedly issued by the aforesaid Popatlal Sheth they had been signed in the name of the plaintiff. It was not the case of either of the parties that the said Popatlal Sheth used to collect the rent from the defendant. In absence of the evidence of the said Popatlal Sheth the said receipts could not have been relied upon to hold that the agreed rent of the suit house was Rs.200=00 per month. Besides, the plaintiff had also stated that prior to the defendant the suit house was leased to one Mr.Sharma for a monthly rent of Rs.300=00 and had produced evidence to prove that he received Rs.300=00 per month towards the rent of the suit house. In view of the said *ante-litem-motam* evidence there was no reason not to believe the evidence of the plaintiff. Besides, the evidence Exhs.114 and 119 heavily relied upon by Mr.Gohil were not the direct evidence of rent agreed upon by the parties. Exh.119 is the municipal record where the Annual Letting Value of the suit house had been

assessed at Rs.2,400=00. On the basis of the Annual Letting Value determined by the local authority it cannot be said that the agreed rent was Rs.200=00 per month particularly when there was other evidence on the record. Similarly, Exh.114 was the payment made to the society from the rent charged by the plaintiff. It is stated that the member was required to make contribution to the extent of 5% of the rent charged by him. As the plaintiff had contributed a sum of Rs.10=00 per month it should be inferred that the agreed rent was Rs.200=00. There is no evidence on record that a member was required to contribute 5% of the rent charged, to the society. Besides, since 1st October, 1978 the plaintiff had made contribution of Rs.12=50 per month. In my view, the defendant had failed to establish that the contribution stated to have been made by the plaintiff was proportionate to the rent charged by him. Hence, I hold that the agreed rent of the suit house was Rs.300=00 as held by the lower appellate Court. As to the taxes the plaintiff did raise a plea that the defendant was required to pay the taxes. However, the aforesaid letter Exh.52 does not refer to the taxes to be borne by the defendant. Besides, there is no other evidence that under the terms of tenancy the defendant was required to pay the taxes levied by the Government or the local authority. The defendant also, in his written statement, denied that he

had agreed to pay the taxes as alleged. In absence of any evidence the defendant cannot be saddled with the liability to pay taxes.

This brings me to the question, whether the defendant was a tenant in default and whether a decree for eviction should be passed against him. As to the arrears of rent both the Courts below have held that the defendant was in arrears of rent since 1st September, 1980 as alleged. As held hereinabove, the contractual rent of the suit house was Rs.300=00 per month. *Admittedly*, the defendant did not respond to the suit notice Exh.68. He did not pay the amount of rent demanded under the suit notice nor did he raise the dispute as to the standard rent of the suit house. It was for the first time in the written statement that he raised the dispute as to the standard rent. If the rent is payable by month; the tenant is in arrears of rent for six months and more; there is no dispute as to the standard rent of the leased premises and the tenant fails to pay the rent demanded within one month from the receipt of the notice of demand, a decree for eviction is inevitable. In the present case, in my view, all the aforesaid conditions had been satisfied. A decree for eviction was, therefore, inevitable.

Even if it is believed that the defendant was

entitled to protection under Section 12(3)(b) of the Rent Act he was required to pay the amount of rent then due on the first day of hearing of the suit or on or before such other date as the Court may fix and thereafter to continue to pay or deposit the rent regularly. *Admittedly*, the defendant did not pay the amount of rent due on the first date of hearing. If the defendant were given the benefit of his raising the dispute as to the standard rent of the suit house and the decision of the learned Civil Judge that the agreed rent of the suit house was Rs.200=00 even then pending the Appeal the defendant was required to deposit monthly rent of Rs.200=00 regularly. As recorded hereinabove, pending the Appeal the defendant did not make regular payment every month. Instead, he made two lump-sum payments: (1) in the sum of Rs.2,400=00 on 3rd December, 1990 and (2) in the sum of Rs.6,400=00 on 16th August, 1991. This also was not the full payment of rent [*@ of Rs. 200=00 per month as decided by the trial Court*]. Further, pending this Revision Application, this Court {*Coram*: **R.K.Abichandani, J.}** had granted conditional stay of the execution of the decree for possession. The defendant was, therefore, under an obligation to deposit the rent regularly every month. Here also, the defendant was grossly negligent. After making initial deposits in the months of November and December, 1992 the defendant fell in arrears and made lump-sum deposits at the end of six

months, 9 months, 10 months, 26 months, 36 months and 12 months. Thus, the defendant has clearly failed to comply with the conditions imposed by this Court also. In view of the above facts, the defendant cannot be said to be a tenant ready and willing to pay the rent. The plaintiff is, therefore, entitled to a decree for eviction.

For the reasons recorded hereinabove, the decree for eviction passed by the lower appellate Court against the defendant is confirmed. The Revision Application is dismissed with cost throughout. Rule is discharged. *Interim* relief stands vacated.

{Miss R.M Doshit, J.}

Prakash*